

Policy Update

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Ms. Betty Lou Edwards, Editor

WATER RESOURCES DEVELOPMENT ACT OF 1996

President Clinton signed the Water Resources Development Act (WRDA) of 1996 into law on 12 October 1996. The law authorizes \$5.2 billion in water resources development projects and programs in support of the Army Civil Works mission. It represents a four year effort on the part of the Administration and the Congress to enact legislation to preserve and develop the Nation's water resources infrastructure. WRDA 96 contains a significant number of environmental provisions, including restoration of the Everglades and South Florida Ecosystem; authorizes 44 water resources projects for flood control, navigation, and environmental restoration and protection; and increases non-Federal cost sharing to 35 percent for both flood damage reduction and environmental protection projects. Also included is an important provision for the port community--the law provides for consistent cost sharing for dredged material disposal facilities constructed for operation and maintenance of Federal channels and harbors. Such facilities are considered a General Navigation Feature and cost shared based on depth of the channel improvement.

Now that WRDA 96 has been enacted, the Corps will focus on implementing many of the authorized projects and programs. As with previous WRDA's an implementation process is being developed such that each provision of the Act will be reviewed and implementing guidance issued after coordination within the Corps and with the Office of the Assistant Secretary of the Army (Civil Works). While the Act contains a number of significant provisions to preserve and develop the Nation's water resources infrastructure, it also contains provisions with the potential for adverse program effects which must be managed through the implementation process and through the budget process. In view of current Federal fiscal constraints, we must prudently manage program resources and insure that implementation efforts are consistent with Administration programs and policies. Divisions and districts are reminded to refrain from making any commitments based upon interpretations of the provisions in WRDA 96 prior to receiving guidance from HQUSACE. The implementation process is being managed by CECW-AA.

POC: Jim Rausch, CECW-AL, 202-761-0119/ Jan Rasgus, CECW-AA, 202-761-0121

DRAFT GUIDANCE ON DREDGED MATERIAL MANAGEMENT PLANS AND LOCAL PLANNING GROUPS

On 23 August 1996, the National Dredging Team (NDT) circulated for public review and comment the subject draft guidance. The NDT is a Federal interagency formed officially by a signed charter in July 1995 in response to the December 1994 interagency report to the Secretary of Transportation, The Dredging Process in the United States: An Action Plan for Improvement. It consists of the U.S. Environmental Protection Agency, U.S.

Army Corps of Engineers, National Marine Fisheries Service, Office of Ocean and Coastal Resource Management, Fish and Wildlife Service, and Maritime Administration. The objective of the NDT is to facilitate the resolution of issues among the participating Federal agencies by fostering interagency communication and coordination.

The draft guidance on dredged material management plans and local coordination groups being circulated by the NDT has the objective of fostering the development of implementable dredged material management plans for Federal navigation (harbor) projects and associated regulatory activities (non-Federal and private dredged disposal). The guidance calls for the formation of interagency teams for the accomplishment of dredged material management planning with a goal of developing plans that are collaborative, comprehensive and, to the extent possible, consensus based. The guidance recognizes that the Corps dredged material management process is the basic framework in which the interagency team operates and the NDT guidance is compatible with existing Corps guidance.

An earlier draft of the guidance was circulated for comments by the divisions and revisions have been made to address identified concerns. Comments on the current draft are to be sent to the NDT by 25 October 1996.

POC: Rich Worthington, CECW-AA, 202-761-1184

REVISION OF ER 1165-2-131

The revision of ER 1165-2-131, "Local Cooperation Agreements for New Start Construction Projects," is active again. We anticipate that the revision will include all policy and procedural changes which have occurred since the ER was published in April 1989. Comments on the ER that you would like considered during the revision should be sent to Mr. Lloyd Saunders, Policy Guidance Branch (CECW-AG).

POC: Lloyd Saunders, CECW-AG, 202-761-8731, fax 202-761-8839

SECTION 104 OF WRDA 86 CREDIT APPLICATIONS

If a sponsor requests to participate in design and construction of flood control features, the sponsor should be told a formal written application is required. Sponsors desiring Section 104 of the Water Resources Development Act (WRDA) of 1986 credit may submit an application to the district engineer after the Project Study Plan (PSP) has been certified and the Feasibility Cost Sharing Agreement (FCSA) has been executed. The application must describe in detail what flood control features the sponsor desires to design and construct and include both these costs. (See paragraph 9b of ER 1165-2-29, dated 18 November 1987.) The sponsor must indicate capability that construction can commence prior to Federal project authorization. The district needs to review that the proposal meets Corps design and construction criteria and Principles and Guidelines (P&G) environmental compliance. If these conditions are met, the district submits the application and states so in its memorandum to the division. The division, if it concurs, in

its memorandum to CECW-P forwarding the application, states that it concurs with the proposal. Section 104 of WRDA 86 can not be used as an authority for the Corps to accept funds from sponsors to perform the design and construction. Credit can only be conditionally approved by the Assistant Secretary of the Army (Civil Works) for construction (not lands, easements, rights-of-way, relocations and dredged material disposal areas [LERRD]) of flood control (not hurricane and storm damage reduction [H&SDR]) features.

POC: Alan Lauwaert, CECW-AG, 202-761-0125

WATERSHED PLANNING

With the increased emphasis on the notion of watershed planning at the national level and among various Federal agencies, Headquarters staff is in the process of defining watershed planning for the Corps of Engineers. As part of the Policy Studies program at the Institute for Water Resources (IWR), Headquarters and IWR staff are cooperating in the development of guidelines and procedures for watershed planning. A recent letter, dated 26 August 1996, Subject: Watershed Approach to Planning and Management, signed by the Deputy Director of Civil Works, transmitted a copy of the draft guidelines for comment. In addition, input was requested from the field offices on the role of the Corps in water-shed planning and management. Once this input is received, it will be considered as the guidelines are finalized.

POC: Jan Rasgus, CECW-AA, 202-761-0121

NEW DEVELOPMENTS IN CULTURAL RESOURCES CONTRACTING

The Policy Guidance Branch and the Chief Counsel's Labor Relations Specialists are working with the Department of Labor to resolve increasing problems associated with Corps cultural resources contracting and administration of the Service Contract Act (SCA). The SCA was created to ensure that non-professional employees working for the Government, in a contract capacity, are treated fairly and receive compensation appropriate to their duties and job location.

In accordance with the SCA, the Department of Labor has established an archeological technician position description and locality wage rates for the position. Labor considers any cultural resources contract employee to be subject to the SCA if the employee has not been awarded an advanced degree in Anthropology, Archeology, History, or a related field. As a result of Labor's position, the Corps is experiencing increasing problems in categorizing cultural resource contract workers and a surge in contracting costs because of the application of locality wage rates. We are finding that the technician position description is unacceptably broad and that the corresponding wage rates are contract busters.

Because the Corps and other land managing agencies are experiencing similar problems, the Department of Labor has agreed to conduct an extensive review of its positions and

wage rates. In all likelihood, Labor will establish an archeological series that will generally cover positions below the Principal Investigator (or all positions for which an advanced degree is not required) and will establish a wage hierarchy that will be more compatible with the positions.

More information will follow on this as progress is made by Labor and Federal agencies.

POC: Paul Rubenstein, CECW-AG, 761-1257

TASK FORCE ON CORPS/TRIBAL INTERGOVERNMENTAL RELATIONS

This Task Force has completed an interim report and the study managers, Mr. Jerry Peterson of Planning Division and Mr. Mark Dunning of the Institute for Water Resources (IWR), have presented the Director of Civil Works with a series of recommendations. The Task Force conducted a series of regional workshops to seek the views and advice of representatives from a variety of tribes, groups, and organizations for indigenous peoples. The recommendations presented to the Director reflect the Task Force's experiences and data gathering from the workshops and internal deliberations.

Two of the recommendations, the development of interim policy and the subsequent development of long-term policy on Corps/Tribal Intergovernmental Relations, have been assigned to the Policy Division. The Policy Guidance Branch will soon begin the task of preparing draft interim guidance. This will, as with the Task Force work, be a team effort bringing together a group of experts with wide-ranging expertise and knowledge. Policy Guidance will work closely with Task Force members, IWR, Corps Tribal/Native American Coordinators, other Corps specialists working with indigenous groups, specialists from other agencies, and representatives from the indigenous communities. Policy development in this area will be a complex and time consuming exercise; regular progress reports and information for Corps commands will appear in future editions of this newsletter and more formal messages from the Directorate of Civil Works.

POC: Paul Rubenstein, CECW-AG, 761-1257

ACID MINE DRAINAGE GUIDANCE

The remediation of acid mine drainage discharges into receiving streams and water bodies has been a significant and contentious problem for both state mining departments responsible for their cleanup and for the Department of Interior's Office of Surface Mining (OSM). The problem is particularly contentious when the source of the acid mine drainage is an abandoned mine and no responsible party remains. Discussions were initiated with the OSM to help clarify Corps policy and define our role in aiding OSM and responsible state agencies to address this significant environmental problem. Preliminary guidance identifies two potential avenues for participation in acid mine drainage remediation investigations: (1) consider the problem under our ecosystem restoration program and utilize our Section 1135 Program, Section 216 Program, or seek a specifically authorized project; or (2) support OSM under our Support for Others

Program. OSM has been very responsive in our initial discussions and has gone so far as to include language in its Fiscal Year 1996 appropriations that states, "Funds made available to States under title IV of Public Law 95-87 may be used, at their discretion, for any required non-Federal share of the cost of projects funded by the Federal Government for the purposes of environmental restoration related to treatment or abatement of acid mine drainage from abandoned mines: ..." On 11 June 1996, a draft acid mine drainage policy memorandum was forwarded to MSC environmental office chiefs and selected MSC personnel involved in acid mine drainage activities requesting their comments. Once these comments have been incorporated, a Directorate-wide review will be undertaken, along with a review by OASA(CW), prior to finalizing the guidance.

POC: Bill Klesch, CECW-AA, 301-713-3160 x141
Editors Note: Bill currently is on a six-month assignment as the Deputy Director at Coastal America.

POLICY "HOT PAGE" AND "GUIDANCE PAGE"

As part of an initiative to do more/better "partnering" with Major Subordinate Commands, District Commands, Field Operating Activities, and Laboratories on Civil Works policy matters/issues, the Policy Division (CECW-A) has developed a "hot page" and the Policy Guidance Branch (CECW-AG) has developed a "guidance page." Both have been installed on the USACE Information Net (Inet) effective 27 September 1996. The "hot page" will be updated weekly, and will provide the current status of Project Cooperation Agreement (PCA) reviews, pertinent legislation, Water Resources Development Act (WRDA) implementation and other policy items of current interest. The "guidance page" will be updated monthly and will provide the latest clarifications of established policy guidance, recent guidance provided on various policy issues raised to HQUSACE, and suggestions on how to improve getting policy guidance action. Your comments on the usefulness of the "hot page" and the "guidance page" and/or how they could be made more helpful would be appreciated. Be sure to specify whether comments pertain to the "hot page" or the "guidance page." The "hot page" can be accessed by clicking on the "Policy Hot Page" (flame) button on the Civil Works Policy Division homepage <http://www.usace.army.mil/inet/functions/cw/cecwa/cecwa.htm>), or by using the following address on the USACE homepage: <http://www.usace.army.mil/inet/functions/cw/cecwa/hotpgbul.htm>. The "guidance page" can be accessed by clicking on the "Policy Guidance" (helm) button on the Civil Works Policy Division homepage (<http://www.usace.army.mil/inet/functions/cw/cecwa/cecwa.htm>), or by using the following address on the USACE homepage: <http://www.usace.army.mil/inet/functions/cw/cecwa/guidance.htm>.

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"POLICY DIGEST" DISTRIBUTION AND ADDITIONAL COPIES

An updated EP 1165-2-1, Digest of Water Resources Policies and Authorities (15 February 1996), also known as the "Policy Digest," has been printed and distributed.

Each Corps Major Subordinate Command, District Command, Field Operating Activity, and Laboratory should have received 10 copies (the "standard" distribution) for internal distribution and reference purposes. Revised pages reflecting policy changes will be printed and distributed in the future for insertion into office reference copies. Additional copies of EP 1165-2-1 for personal (consumptive) use are envisioned to be downloaded and copied (in whole or part, as needed) from the USACE Information Net (Inet) at the following sites: <http://www.usace.army.mil/inet/usace-docs/eng-pamphlets> or <http://www.usace.army.mil/inet/usace-docs/ep.html>.

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LOW-USE PORTS

Please be advised that districts and divisions should not use, or even reference, the list of small harbors proposed for discontinuance which was prepared in 1995. This list has been abandoned and is not only misleading, but meaningless. A review of low-use ports currently is being conducted by a Headquarters task force. This review is nearing completion; however, as of this date, no list has been formulated, even in preliminary form. Although the objectives of the current study and that of 1995 are similar, the criteria of the current study are far different and much more precise than the earlier effort.

POC: DuWayne Koch, CECW-AA, 202-761-4312

HQ DEVELOPMENTAL ASSIGNMENT

Over the last 3 months, I, Jeff Groska, have been serving on a developmental assignment in the Legislative Initiatives Branch in Policy Division. I have been asked to provide some thoughts on my experiences in order to give others an idea of what this tour has been like. I came out from the Sacramento District in June 1996 and will be returning sometime in October depending on the success of the Water Resources Development Act of 1996. So far on this tour, I have participated principally in two major types of activities--preparation of Congressional Testimony and WRDA 96.

In the former, I worked with people here in the branch and in the Office of the Assistant Secretary of the Army (Civil Works) to brief Secretary Lancaster for his testimony on S. 988, the Oregon Inlet Protection Act of 1996. This involved a lot of coordination with Congressional staff, representatives from the Office of Management and Budget (OMB), and ASA(CW) staff. I was really quite pleased at the degree of autonomy available to the personnel in HQUSACE in dealing with Congressional staff as compared to the district level where we are usually several levels removed from such contact. Preparation for the hearing gave me an introduction into the modus operandi of ASA(CW) and the Congressional Committees. Meetings with Secretary Lancaster were business-like, yet had a working informality not seen in similar types of meetings in the field where there is too often a power struggle among meeting participants.

The hearing itself, along with a second hearing I attended on the American River Watershed Project, was eye opening on the workings of our elected representatives. While not unlike most public meetings which have testimony from various divergent and conflicting parties, Congressional hearings had an aura of disorganization and disrespect for the people who are there to testify on issues of concern. Congress has its unavoidable disruptions for floor votes and other business, but during the allotted hearing times, often very few of the committee were in attendance, showing up only to make prepared statements and vote.

Preparation for WRDA 96 is a monumental task. Initially, I worked with Legislative Initiatives Branch personnel to prepare for the task of Congressional debate. We prepared numerous spread sheets and data-bases on the various proposed bills from the House of Representatives, the Senate, and the Administration that provided data on costs, accomplishments, and Corps positions. In addition, we prepared a specific file system on each of the provisions with as much information as could be obtained. Much of this time has been spent responding to specific requests from individuals and committee staff as well as OMB for information on specific provisions of the bill. Unfortunately, this required me to become a major pain in the lower extremity to many of you in planning and programs in the field to whom we needed to go to for the answers. However, I appreciate the responsiveness and help that have been provided. This part of WRDA has been a game of jump and wait. Questions come in and we scurry to respond and then wait again for the next set of requests. While hectic at times, it gives me an appreciation for some of the pressures at HQUSACE that I was not aware of at the district when I had to respond under short notice to these types of requests for information.

On a personal note, I appreciate the opportunity to get back to the Washington area and enjoy the many attractions and historical areas. I was extremely happy that the fabled Washington summer did not materialize this year. When I leave for Sacramento next month, I will have a lot of memories and a new appreciation for the workings of the Corps of Engineers.